

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

ENERGY TRANSFER EQUITY, L.P., and ENERGY TRANSFER PARTNERS, L.P., Plaintiffs, vs. GREENPEACE INTERNATINOAL (aka “STITCHING GREENPEACE COUNCIL”); GREENPEACE, INC.; GREENPEACE FUND, INC.; BANKTRACK (aka “STITCHING BANKTRACK”); EARTH FIRST!; and JOHN AND JANE DOES 1-20, Defendants.	Case No.: 17-CV-00173-DLH-CSM
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**MOTION FOR LEAVE TO PROCEED AS NON-PARTY,
OR, IN THE ALTERNATIVE, AS AMICUS CURIAE**

Non-party the Earth First! Journal hereby moves this Court for an order authorizing it to proceed in this action as a non-party or as an amicus curiae, and, in support, states as follows:

1. On August 22, 2017, Plaintiffs Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. (“Plaintiffs”) filed the Complaint in this action, naming as a defendant Earth First!. ECF No. 1, at 1. The 187-page Complaint nowhere mentions non-party Earth First! Journal. Plaintiffs attempted to serve Defendant Earth First! at an address affiliated with non-party Earth First! Journal. ECF No. 35-4, at 4. On this basis, Plaintiffs have now moved for a declaration of effective service on Defendant Earth First! ECF No. 33 (the “Motion”).

2. Although the Earth First! Journal is not named as a defendant in the Complaint in this action, and the mailed complaint was addressed only to the named defendant “Earth First!”, out of an abundance of caution undersigned counsel for Earth First! Journal sent a letter to Plaintiffs’ counsel, ECF No. 35-16, on October 23, 2017, alerting them to this discrepancy. That letter

further indicated that because Earth First! is “not an entity at all” but rather a “philosophy” or “movement” with “no members” or “formal leadership,” analogous to the Black Lives Matter movement, it was not properly amenable to suit. The letter urged Plaintiffs’ counsel to “notify the court that service was not properly made” and further urged that they remove the frivolous claims against non-juridical person Earth First! from their Complaint.

3. Plaintiffs nonetheless filed their Motion, ECF No. 33, with this Court on November 20th. As their brief in support of the Motion itself makes clear, Earth First! “has no structure or leadership,” formal membership, or other features that would render it amenable to suit. *See* ECF No. 34 at 3. As Plaintiffs concede, it is a “non-entity,” *id.* at 9 n.5. It cannot properly be named as a defendant to a lawsuit.

4. WHEREFORE, the Earth First! Journal respectfully requests an order from the Court authorizing it to proceed in this action as a non-party (or, in the alternative, as an amicus curiae) and to file the attached Memorandum opposing Plaintiffs’ Motion on the grounds that:

- a. Earth First! lacks capacity to be sued under Federal Rule of Civil Procedure 17(b), based on Plaintiffs’ own submissions; and
- b. By causing the Complaint to be mailed to the offices of non-party Earth First! Journal, Plaintiffs have in any event failed to properly serve Earth First! under Federal Rule of Civil Procedure 4.

As the attached Memorandum notes, on the record before the Court, it would be appropriate to dismiss Earth First! as a defendant.

Respectfully submitted, this 4th day of December, 2017.

/s/ Pamela Spees
Pamela Spees (admitted *pro hac vice*)
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Attorneys for non-party Earth First! Journal

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record in this action via the Court's CM/ECF system, this 4th day of December 2017.

/s/ Pamela Spees
Pamela Spees (admitted *pro hac vice*)